

3/15/74

of hotels and motels, the continued phaseout is as follows: 44 hours in the third year, and 40 hours per week thereafter.

The committee intends that a "custodial" employee be one who guards and protects or maintains the premises, or the hotel or motel facility, in which he is employed. This would include an employee who performs janitorial functions, who keeps the facility clean, who tends the heating system, makes minor repairs, and the like. It would include housemen and gardeners. It would also include employees of the facility engaged in activities incidental to the operation of the hotel or motel, such as maids and custodial employees in the facility's beauty or barber shops, valet, restaurant, and the like. It would include employees engaged in laundering, cleaning, or repairing clothing or fabrics. Overtime protection then, would be afforded to those who have heavy duties such as laying carpets and rugs and arranging furniture and to those who have light duties such as making beds, dusting furniture, and replenishing linen.

NONDISCRIMINATION ON ACCOUNT OF AGE IN GOVERNMENT EMPLOYMENT

The bill amends the Age Discrimination in Employment Act of 1967 to include within the scope of its coverage Federal, State, and local government employees (other than elected officials and certain aides not covered by civil service), and to expand coverage from employers with 25 or more employees to employers with 20 or more employees. The annual authorization of appropriations ceiling was raised from \$3 million to \$5 million. The Administration has also proposed such an extension of coverage for State and local government employees. The amendment is a logical extension of the committee's decision to extend FLSA coverage to Federal, State, and local government employees.

The ADEA prohibits discrimination in employment on the basis of age in matters of hiring, job retention, compensation, and other terms, conditions or privileges of employment. Protection under the Act is limited to individuals who are between the ages of 40 and 65.

As the President said in his message of March 23, 1972, supporting such an extension of coverage under the ADEA, "Discrimination based on age—what some people call 'age-ism'—can be as great an evil in our society as discrimination based on race or religion or any other characteristic which ignores a person's unique status as an individual and treats him or her as a member of some arbitrarily-defined group. Especially in the employment field, discrimination based on age is cruel and self-defeating; it destroys the spirit of those who want to work and it denies the Nation the contribution they could make if they were working."

The committee was impressed by a press release issued by then Secretary of Labor Hodgson on February 4, 1972 which was headed: "Voluntary Compliance with Age Discrimination Laws Opens Up 1 Million Jobs, Secretary of Labor Tells Congress". The release states that informal talks with some 30,000 employers dispelled "preconceived notions or myths" about the older worker.

The committee expects that expanded coverage under the Age Discrimination in Employment law will remove discriminatory barriers

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against employment of older workers in government jobs at the Fed-
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RECOVERY OF BACK WAGES

Section 26 of the committee bill amends section 16(c) of the Act to
authorize the Secretary of Labor not only to bring suit to recover un-
paid minimum wages or overtime compensation, a right which the Sec-
retary currently has, but also to sue for an equal amount of liquidated
damages without requiring a written request from an employee. How-
ever, the committee intends that liquidated damages when recovered by
the Secretary, are recovered in behalf of and for the benefit of the em-
ployee. Further, the committee intends that the good faith defense
provisions of Section 11 of the Portal-to-Portal Act of 1947 are not
in any way diminished and are applicable to claims by the Secretary
for liquidated damages.

The committee also acted on an amendment to Section 16(b) of the
Act to make clear the right of individuals employed by state and
local governments and political subdivisions to bring private actions
to enforce their rights and recover back wages under this Act. This
amendment is necessitated by the decision of the U.S. Supreme Court
in *Missouri, et al.* (April, 1973) which held that Congress in extend-
ing coverage under the 1966 amendments to school and hospital em-
ployees in state and local governments did not explicitly provide the
individual a right of action in the Federal courts although the Secre-
tary of Labor was authorized to bring such suits. In addition the
committee included an amendment to the Portal-to-Portal Act of 1947
which would preserve existing actions brought by private individuals
which would otherwise be barred by the statute of limitations as a
result of the April decision.

Both amendments were included at the request and recommendation
of the Administration and the Secretary of Labor.

TOBACCO EMPLOYEES

Section 9 of the bill establishes an overtime exemption applicable
to employees engaged in the sale at auction of certain types of green
leaf tobacco, and in the general handling of certain other types of
green leaf or perishable cigar leaf tobacco. The exemption permits the
employment of an employee engaged in any such capacity for up to
ten hours in any workday and forty-eight hours in any workweek
during fourteen workweeks in the aggregate in a calendar year, with-
out requiring the payment of overtime compensation. A similar
exemption is provided in existing law, but section 19 of the bill would
reduce and ultimately repeal such exemption but for this section of
the bill.

ESTIMATE OF COST

Pursuant to the requirements of clause 7 of Rule XIII of the Rules
of the House of Representatives, the committee estimates the cost of
the legislation to be \$3 million in each of the five fiscal years succeed-
ing fiscal year 1974. The cost estimate for fiscal year 1974 is \$250,000.